

86 - 1056

NO.

IN THE SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

DEC 24 1986

JOSEPH F. SPANGLER, JR.

FRANK J. CAMOSCIO,

Petitioner,

vs.

WILLIAM HEWETT

(AND A COMPANION CASE),

Respondents.

PETITION FOR WRIT OF CERTIORARI
To the Supreme Judicial Court For The
Commonwealth of Massachusetts

FRANK J. CAMOSCIO
Pro Se
252 Hanover Street
Boston, Massachusetts 02113
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45p12

QUESTIONS PRESENTED

I

Whether the defendant be held to a judgment based on perjured testimony.

II

Whether the defendant be penalized for untimely filing of a motion for a new trial because the court could not make available copies of the court proceedings within the ten day limit.

III

Whether the defendant pay full price for damaged and incomplete cabinets and for damaged appliances.

IV

Whether the defendant pay for unsubstantiated labor charges claimed by the plaintiff.



V

Whether the defendant be denied a proper appeal because of the court of appeals misplacing the transcript of evidence.



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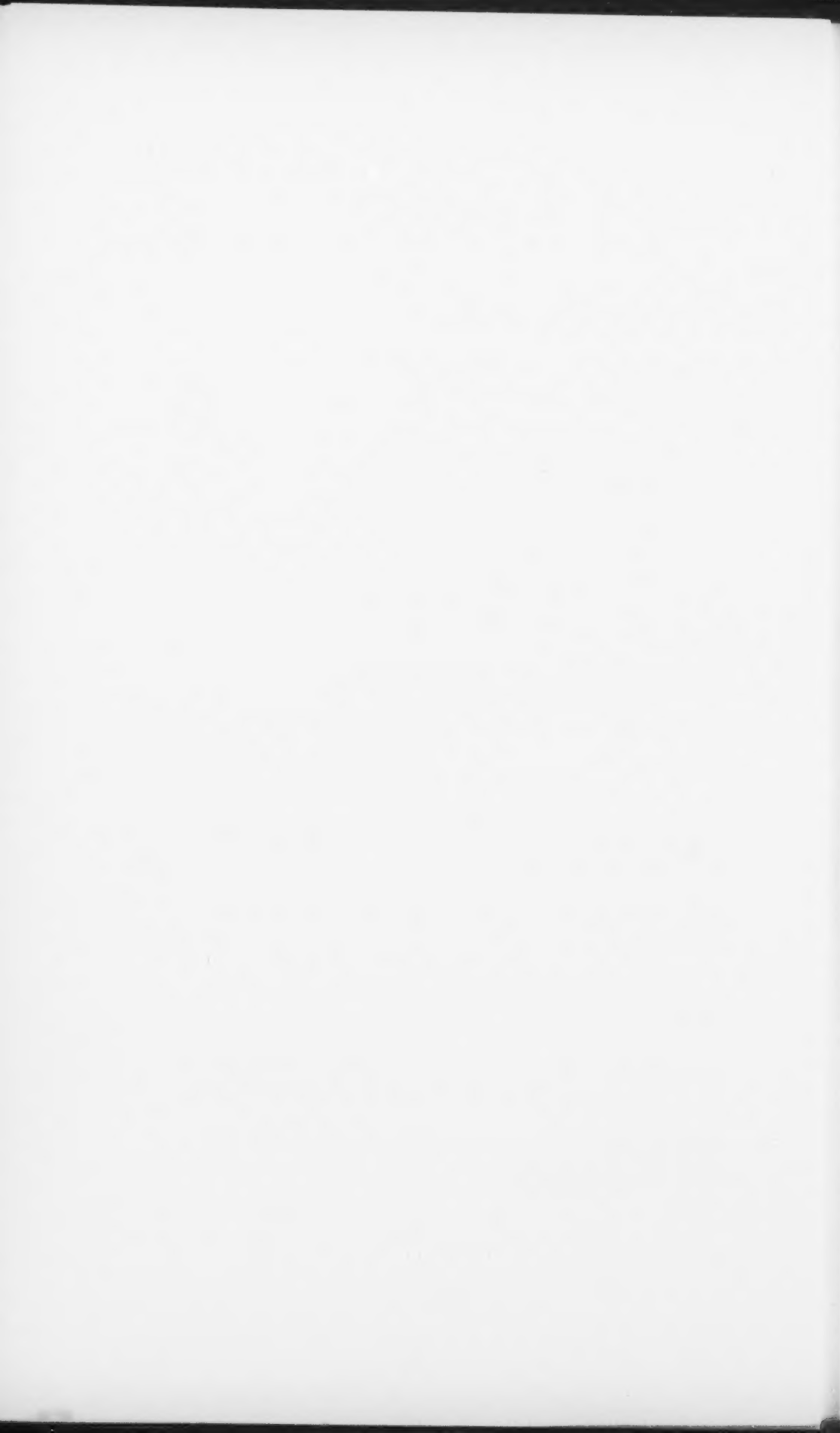
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NO.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

FRANK J. CAMOSCIO

Petitioner,

vs.

WILLIAM HEWETT

(AND A COMPANION CASE)

Respondents.

PETITION FOR WRIT OF CERTIORARI
To The Supreme Judicial Court For The
Commonwealth of Massachusetts

To The Honorable, The Chief Justice And
Associate Justices Of The Supreme Court
Of The United States:

The Petitioner, Frank J. Camoscio,
respectfully prays that a Writ of
Certiorari issue to review the judgment
of the Appeals Court from the Common-
wealth of Massachusetts, which judg-



ment became final on October 16, 1986.

OPINION BELOW

The Opinion of the Court of Appeals (Appendix "A", infra, pp. A1, A2) is unreported.

JURISDICTION

The judgment of the Court of Appeals was entered on October 16, 1986. The jurisdiction of this Court is invoked under Rule 17.1 (a) (b).

STATUTORY PROVISIONS WHICH THE CASE

INVOLVES

The relevant statutory provisions involved are M.G.L. Chapter 231 Section 132, M.G.L. Chapter 268 Section 1, M.G.L. Chapter 266 Section 76, M.G.L. Chapter 211 Section 8 and Note 9 Discretion. M.G.L. Chapter 231 Section 125, M.G.L. Chapter 231 Section 51 and the United States Constitution, Article XIV, Section 1. and the United States



Constitution, Article I and Constitution of Massachusetts, Article XII. (Text set forth in Appendix.)

STATEMENT OF THE CASE

Following a jury trial in Superior Court, Cambridge, Massachusetts (presided over by Judge Mitchell) on April 18, 1985 a judgment was found against Frank J. Camoscio for a sum of \$2,768.73 for William Hewett and a sum of \$14,366.94 for Johnson Woodworking Company, Inc. This action was affirmed by the Appeals Court from the Commonwealth of Massachusetts on October 16, 1986.

The trial judge rejected a motion by the Petitioner asking for a new trial. Judge Mitchell denied the motion for not being timely filed. The court erred when it rejected the Petitioner's motion for a re-trial denying him equal protection and due



process guaranteed him under Article XIV of the United States Constitution. I cite the following cases:

#1 Note 34 Page 34 Amend. 14

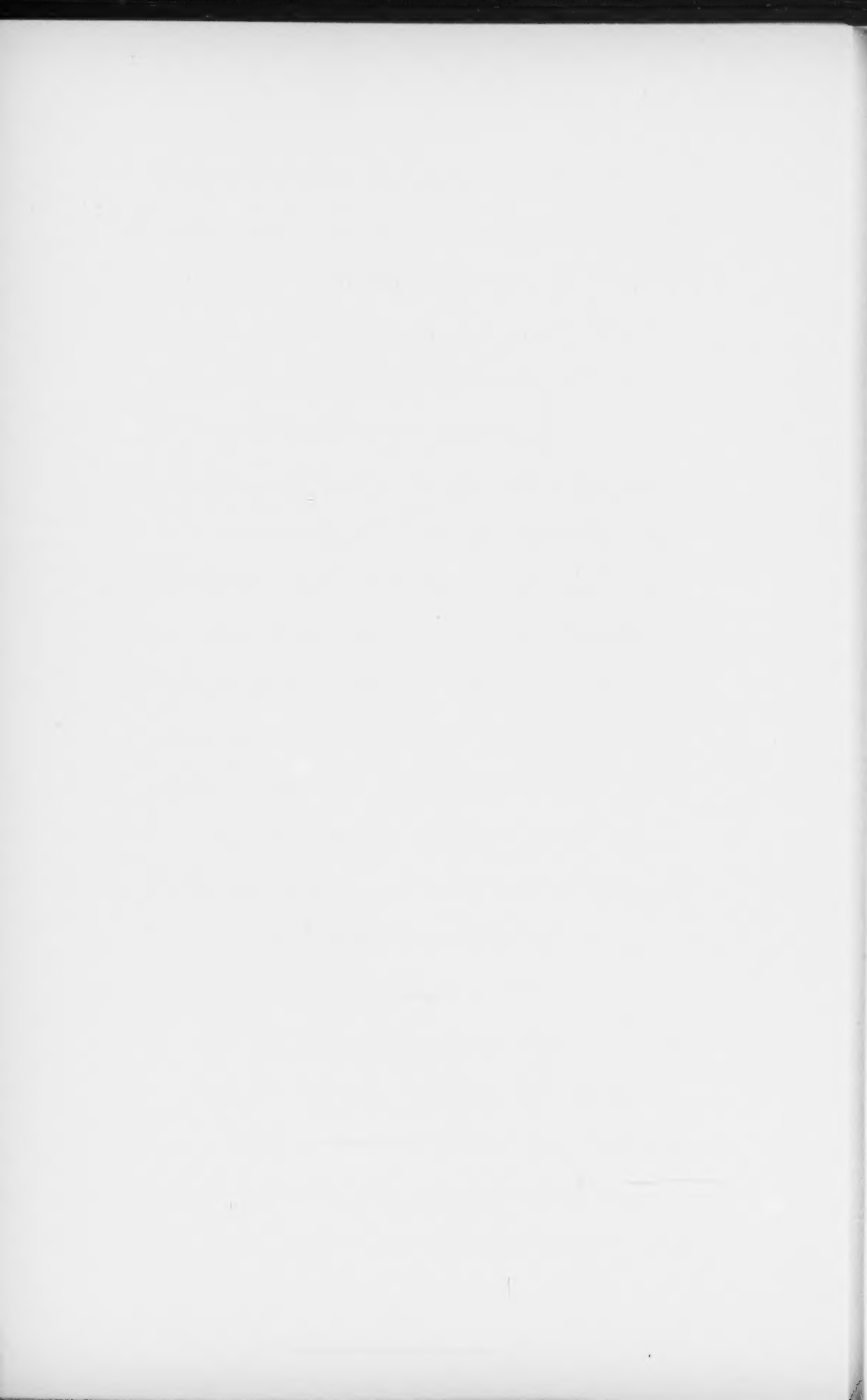
Section 1 United States Constitution

1. Although constitutional "liberty interests" are not entirely dependent on terms of state law, expectations created by laws that bring relationship into being must bear upon liberty interests surrounding that relationship. Adoption of a Minor, 1982, 438 N.E. 2d 38, 386 Mass. 741.

#2 Note 38 Page 34 Amend. 14

Section 1 United States Constitution

2. To determine whether due process requirements apply in the first place, court must look not to the "weight" but to the nature of the interest at stake and must look to see if the interest is within this amendment's protection of liberty and



property. Board of Regents of State Colleges v. Roth, Wis. 1972, 92S. Ct. 2701, 408 U.S. 504, 33 L. Ed. 2d 548.

#3 Note 38 Page 34 Amend. 14

Section 1 United States Constitution

3. Federal courts are required to consider adequacy and availability of remedies under state law before concluding that deprivation of life, liberty, or property violates due process of law. Wolf-Lillie v. Senquist, C.A. Wis. 1983, 699 F. 2d. 864.

#4 Note 39 Page 35 Amend. 14

Section 1 United States Constitution

4. This clause provides that no person may be deprived of life, liberty or property without due process of law and applies to actions of state agencies such as school boards. Givens v. Poe, D.C. N.C. 1972, 346 F. Supp. 202.



The jury's decision was based on perjured statements made by Hewett, one of the Respondents. The Petitioner could not obtain the complete and true transcript of the proceedings of the court due to court reconstruction. The Court of Appeals granted the Petitioner a three month extension of time to prepare his appeal.

The Appeals Court granted the Petitioner, Camoscio, a Motion to Dismiss and/or Modify and Amend Record. The Court erred by denying the Petitioner this motion after granting it to him because according to the Appeals Court Petitioner failed to provide the transcript of evidence to the Appeals Court. This is a fallacy; the Appeals Court misplaced the transcript of the evidence. That omission made meaningful appellate review impossible according to the Appeals



Court and to refile transcript of evidence in the Superiour Court does not bring it before the Appeals Court, thus denying Petitioner proper redress under United States Constitution, Amend I. The Petitioner has an affidavit from his printer corroborating this fact, which was presented to the Appellate Court for reconsideration and was denied.

Also Appeals Court decision and Petitioner's two Motions to Dismiss and/or Modify and Amend Record against the Respondents, Hewett and Johnson Woodworking Company, Inc. I cite the following cases:

Note 12a. Page 651 Amend. I United States Constitution

1. Right of petition guarantees all citizens right to appeal to legislature or judiciary and this right is not conditioned upon motive.



Wilmorite, Inc. v. Eagan Real Estate, Inc. D.C. N.Y. 1977, 454 F. Supp. 1124, affirmed 578 F. 2d 1372, certiorari denied 99 S. Ct. 573, 439 U.S. 983, 58 L. Ed. 2d 655.

Note 12a. Page 651 Amend. I United States Constitution

2. Right to petition includes, among other things, activity designed to influence public sentiment concerning the passage and enforcement of laws as well as appeals from redress made directly to the government. Webb v. Fury, W. Va. 1981, 282 S.E. 2d 28.

Note 12b. Page 651 Amend. I United States Constitution

3. Access to the courts is protected by this amendment right to petition for a redress of grievances. Pizzolato v. Perez, D.C. La. 1981, 524 F. Supp. 914.

Note 12b. Page 651 Amend. I United



States Constitution

4. Constitutional right to petition for redress of grievances encompasses access to the courts as well as other branches of the government. Roth v. Department of Veteran Affairs, 1980, 167 Cal. Rptr. 552, 110 C.A. 3d 622.

The Petitioner, Camoscio, filed a Motion for Directed Verdict and for Judgement Notwithstanding the Verdict to make the Court aware of its error. The Court of Appeals denied this motion.

The Petitioner applied for a rehearing with the Appeals Court. He then went to the Supreme Judicial Court for Application for Further Appellate Review.

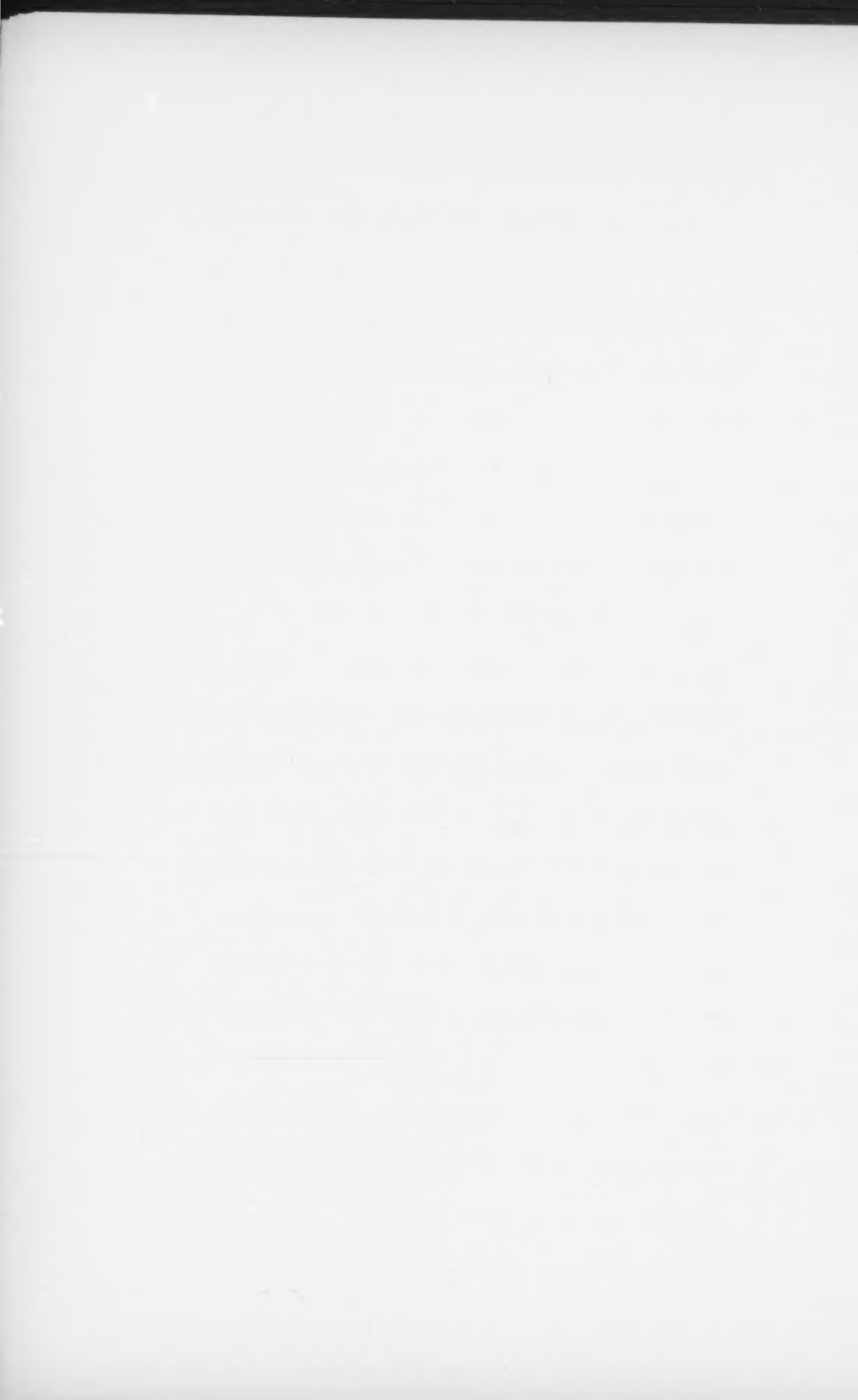
The Petitioner has filed a civil suit against Respondent, William Hewett, in Norfolk Superior Court. Hewett has

not denied the charges of presenting false testimony at the trial. He has defaulted, and the Petitioner, Camoscio, is currently on the trial list for summary judgment awaiting trial.

The Petitioner has filed perjury charges in Middlesex County against the Respondent, Hewett. The Respondent admitted the false statements before Judge Sullivan who was hearing the perjury charge on November 4, 1986. These statements proved that Hewett did not lower the floor making it impossible to explain the hundreds of man hours charged to the Petitioner, thus averaging approximately fifteen hours per screw to hang the cabinets. The man hours per installation of one cabinet is roughly forty six hours according to his time sheets. The Petitioner was denied due process because one of the Respondent's,

Hewett, based his appeal on false statements which he admitted to be false before Judge Sullivan. Therefore, the Appeals Court based their decision on perjured testimony in the Respondent's brief.

The Petitioner feels that the Court erred by awarding full value on damaged and unworking appliances. Reardon v. Reardon, 219 Mass. 594, 107 NE 522. "In a suit in equity reported, for determination by the supreme judicial court, by a judge of the Superior court upon an order made by him sustaining a demurrer to the bill, where the plaintiff asked leave of this court, under this section, to amend his bill by inserting a certain allegation, the leave was granted by the court and the case was considered on that footing." And in Twombly v. Billerica, 262 Mass. 214, 159 NE 630. "The power



conferred by the section will not be exerted except in those cases where justice seems to require it."

Petitioner presented Court of Appeals with repair bills and motion was denied. The cabinets which Johnson Woodworking Company, Inc. made were cracked, damaged and water stained. These cabinets were also missing doors and shelves. The Respondent, Johnson Woodworking Company, Inc., through Leonard Johnson, testified that the cabinets were not cracked and that the counter-top was all walnut. These items in question can be seen at the Petitioner's house clearly demonstrating the perjured statements. The cabinets are cracked and the counter-top is cherry wood with a walnut veneer. A viewing at the house by the court will verify these facts.

The Petitioner had Johnson Wood-

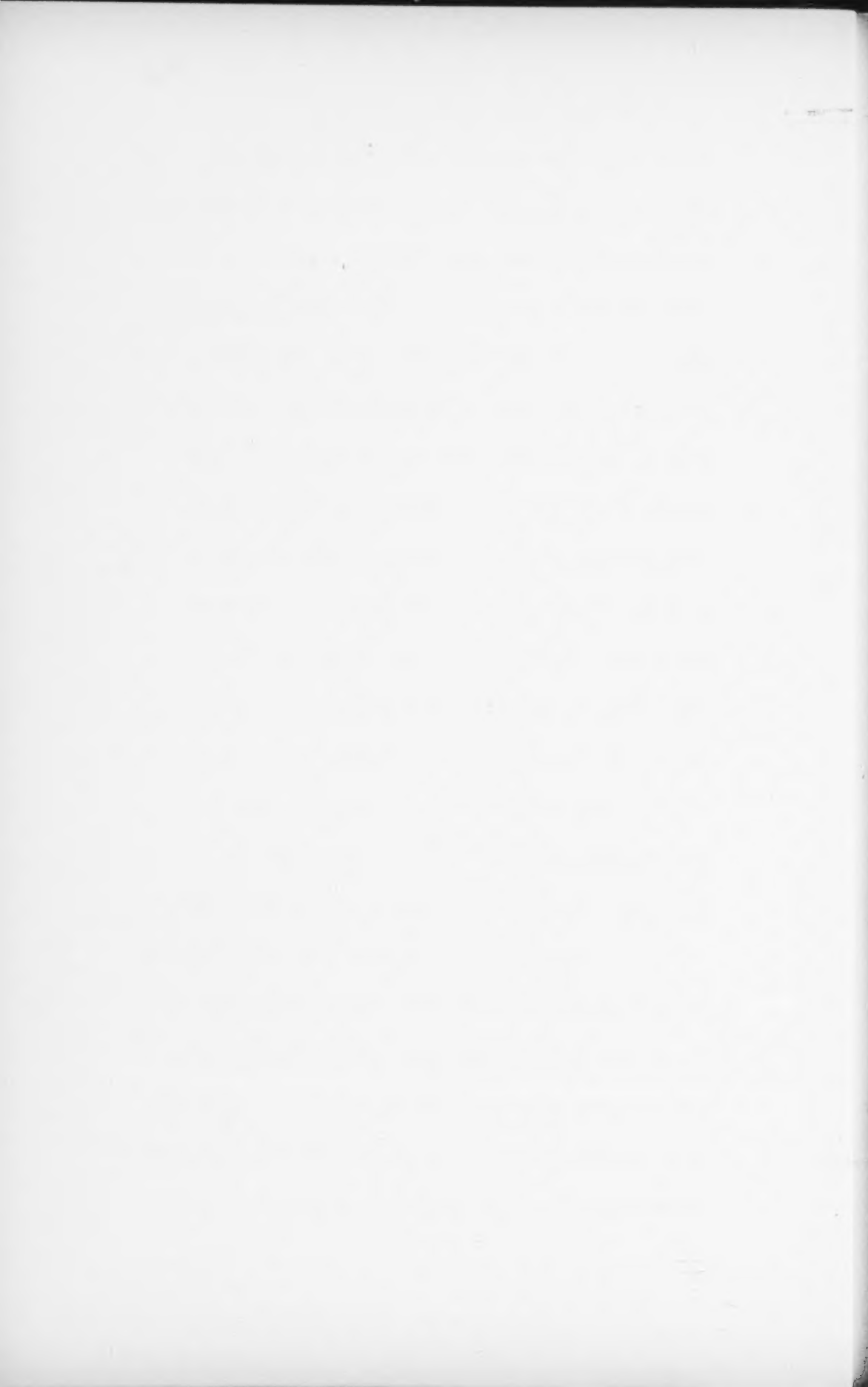


working Company, Inc. purchase all brand new appliances at contractor's prices. Johnson Woodworking Company, Inc., however, delivered damaged appliances none of which worked properly. The Petitioner feels that he should not pay full price for damaged goods. Goss v. Donnell, 263 Mass. 521, 161 NE 896. "Where after the entry of an "appeal", the appellant presented to the court a motion praying that, under this section "cause to be determined and made a matter of record all of the material facts involved in the appeal from the decree, as set forth in the appellate's appeal and specifications and reasons for said appeal," it was held that, since the probate court had power to correct errors in the decree arising from fraud, mistake, want of jurisdiction or for any reason adequate in law,



this section could not be invoked successfully by the appellant, who must seek relief in the first instance in the probate court." Also Weinstein v. Miller, 249 Mass. 516, 144 NE 387.

"Where suit was brought on a contract, and a final decree was rendered for plaintiff on the theory of modified contract, plaintiffs on appeal were given leave to amend by setting out modified contract, in view of this section." In order for a person to pay a bill, the bill must first be explained to the customer if any questions arise. Also Tanszer v. Koster, 1968 Adv Sheets 818, 237 NE 2d 21. "In a case where the appellate court stated that the direction of a verdict below against the plaintiff was right on the pleadings but not on the evidence, the plaintiff was granted leave under the instant section, to



apply to the Superior Court to insert a proper count by way of amendment." And Manning Co. v. Shinopoulos, 317 Mass. 97, 56 NE 2d 869. "Plaintiff was given leave within thirty days to apply to the Superior Court for appropriate amendments to its bill so that it might conform to the proof, which established fraud under Chapter 109A, Section 7.

REASONS FOR GRANTING THE WRIT

The Petitioner asserts the right to be heard for Writ of Certiorari under Rule 17.1 (a). "When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings,

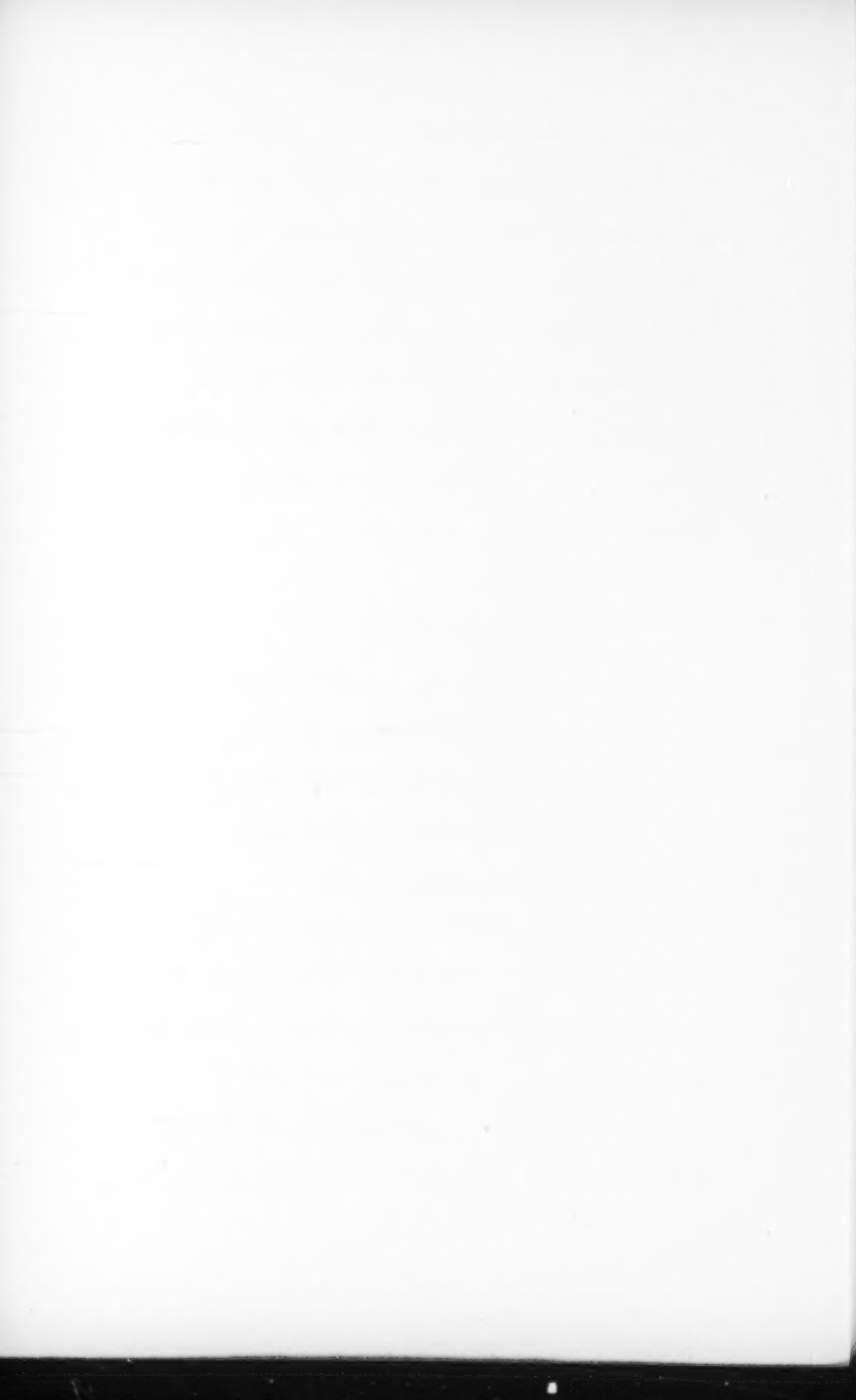


or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision." And under Rule 17.1 (b) "When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals."

ARGUMENT NO. I

Jury Decision Is Based On
False Statements. There-
fore, Their Decision Should
Be Overturned Or Judgment
Should Be Set Aside.

The Petitioner has demonstrated that the Respondents had presented false statements to the jury causing them to make an erroneous decision. The Petitioner cites Scofield v. Barowsky, 249 Mass. 1, 143 NE 921 and Twombly v.



Billerica, 262 Mass. 214, 159 NE 630.

ARGUMENT NO. II

The Petitioner Should Only
Pay The Respondents For
Fair Market Value Of
Damaged Goods Delivered.

The Petitioner has demonstrated to this Court that the Respondent, Johnson Woodworking Company, Inc., delivered damaged and incomplete goods. The Petitioner cites two cases: Weinstein v. Miller, 249 Mass. 516, 144 NE 387 and Scofield v. Barowsky, 249 Mass. 1, 143 NE 921.

ARGUMENT NO. III

The Petitioner Lost His
Right To Proper Redress
Due To Court Reconstruc-
tion Denying Him Access
To Documents Necessary
For Making It Possible
To File A Timely



Directed Verdict Or Motion
For a Re-Trial, Thus
Denying Due Process.

The Petitioner has demonstrated both the denied timely access to material necessary for proper redress in Superior Court and the loss of material necessary for proper redress by the Appeals Court, thus denying due process. The Petitioner cites Pizzolato v. Perez, D.C. La. 1981, 524 F. Supp. 914, Wolfe-Lillie v. Sonquist, C.A. Wis. 1983, 699 F. 2d 864 and Hudyka v. Interstate Tire and Brake Stores, Inc., 1971 Adv. Sheets 1249, 271 NE 2d 617.

CONCLUSION

The Petitioner asserts that he should not be bound to a judgment based on false testimony. The Petitioner argues that he was denied redress due to court reconstruction barring access to material making it impossible to



overturn jury's decision through discovery of new evidence. The Petitioner also argues that he was denied proper redress by the Appellate Court losing transcripts, thereby causing an unfavorable decision.

I hereby certify that all the statements contained in my Petition For Writ Of Certiorari are true and are made under the pains and penalties of perjury.

Respectfully submitted,

Frank J. Camoscio, Pro Se
Frank J. Camoscio
Pro Se
252 Hanover Street
Boston, Massachusetts 02113
(617) 720-3841



Domenic Bruno
NOTARY PUBLIC

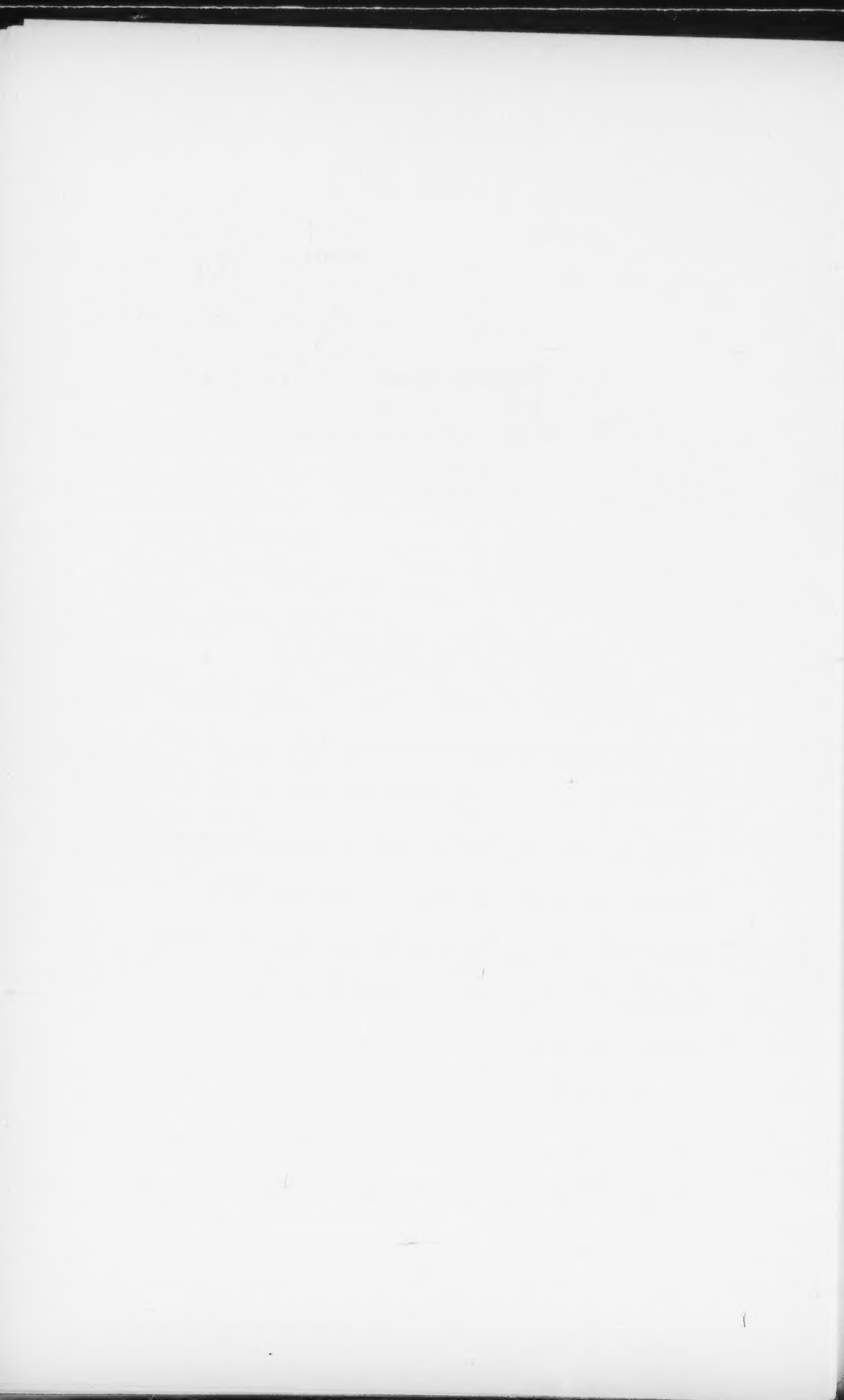
My Commission Expires May 29, 1992

Domenic Bruno
Dec 23, 1986

CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Petition For Writ Of Certiorari were mailed to Brian F. Mahoney, Esq., 15 Broad Street, Boston, Massachusetts 02109, Attorney for William Hewett and Johnson Woodworking Company, Inc., this 23rd day of December 1986.

I hereby certify that all the statements contained in my Certificate of Service are true and are made under



the pains and penalties of perjury.

Frank J. Camoscio, Prose
Frank J. Camoscio
Pro Se

Domenic Bruno
NOTARY PUBLIC

My Commission Expires May 29, 1992

Domenic Bruno
Dec 23, 1982



A P P E N D I X



COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

NO. 85-682/683

WILLIAM HEWETT

vs.

FRANK J. CAMOSCIO

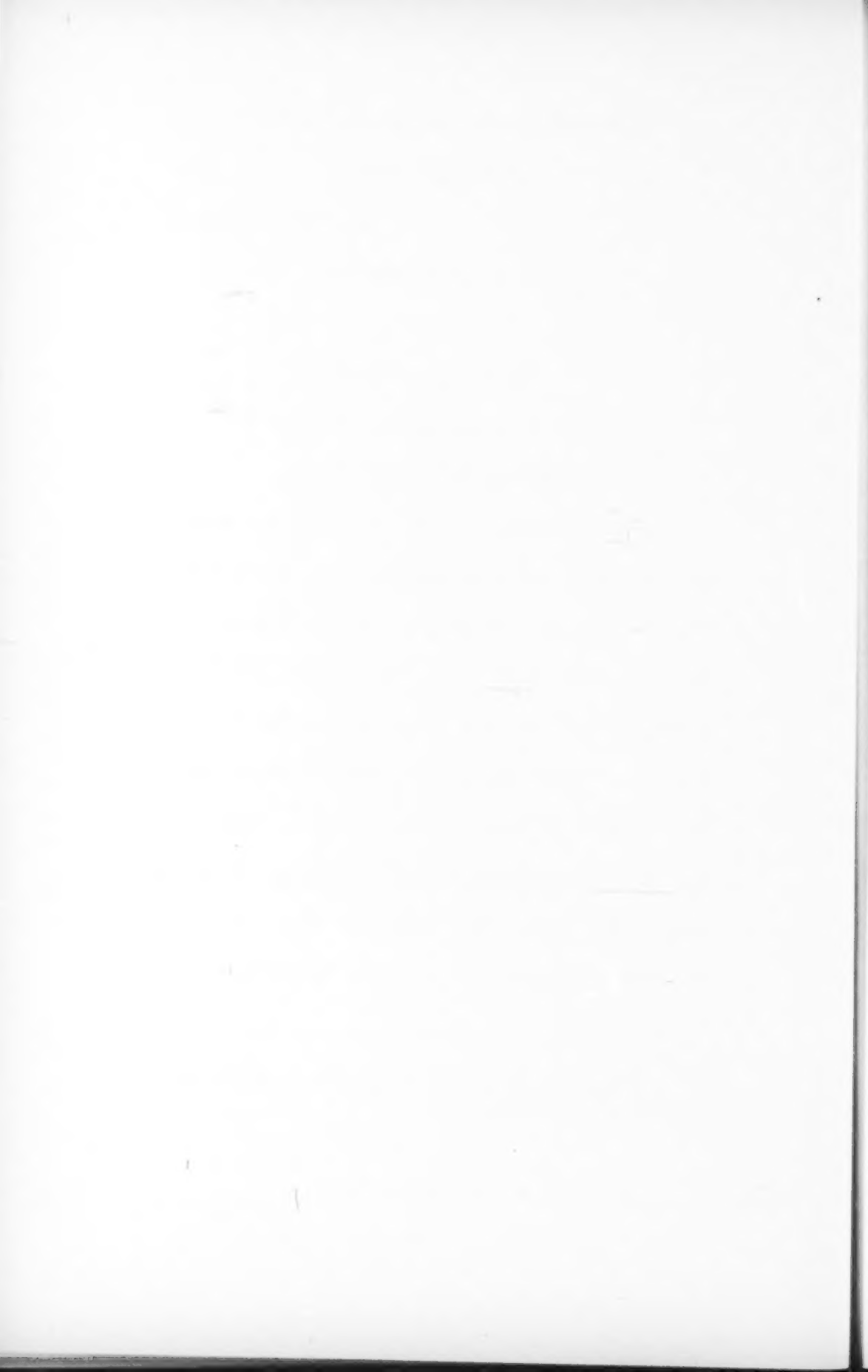
(and a companion case). ✓¹

MEMORANDUM AND ORDER.

The defendant has failed to meet his burden of demonstrating reversible error for the reason, if no other, that he has not supplied the court with a transcript of the evidence. Mass.R.A.P. 18(a). That omission makes meaningful appellate review impossible. Kunen v. First Agricultural Natl. Bank, 6 Mass. App. Ct. 684, 685-692 (1978). Filing of the transcript in the Superior Court

✓¹ Johnson Woodworking Co., Inc. v. Frank J. Camoscio.

APPENDIX "A"



does not bring it before this court.
See Southeastern Bank & Trust Co. v. Pappas, 11 Mass. App. Ct. 898 (1980).

On its face the appeal raises no reversible error. In the absence of any motion for a directed verdict, see Mass.R.Civ.P 50(a), appellate review of the sufficiency of the evidence is unavailable. International Fidelity Ins. Co. v. Wilson, 387 Mass. 841, 846-847 (1983). Although the record might still be examined to determine if a manifest miscarriage of justice is presented, see Michnik-Zilberman v. Gordon's Liquor, Inc., 14 Mass. App. Ct. 533, 537 (1982), S.C. 390 Mass. 6, 9-10 (1983), it would serve no purpose here because the defendant-appellant's briefs and appendices are essentially an attempt to relitigate these cases. The only legal issue raised, and it is unclear



in what manner it was raised below, is whether the statute of limitations for a tort, G. L. c. 260 § 2A, barred the actions. As the actions were in contract, the pertinent statute is G. L. c. 260, § 2. The actions have not, on this record, been shown to have been untimely commenced.

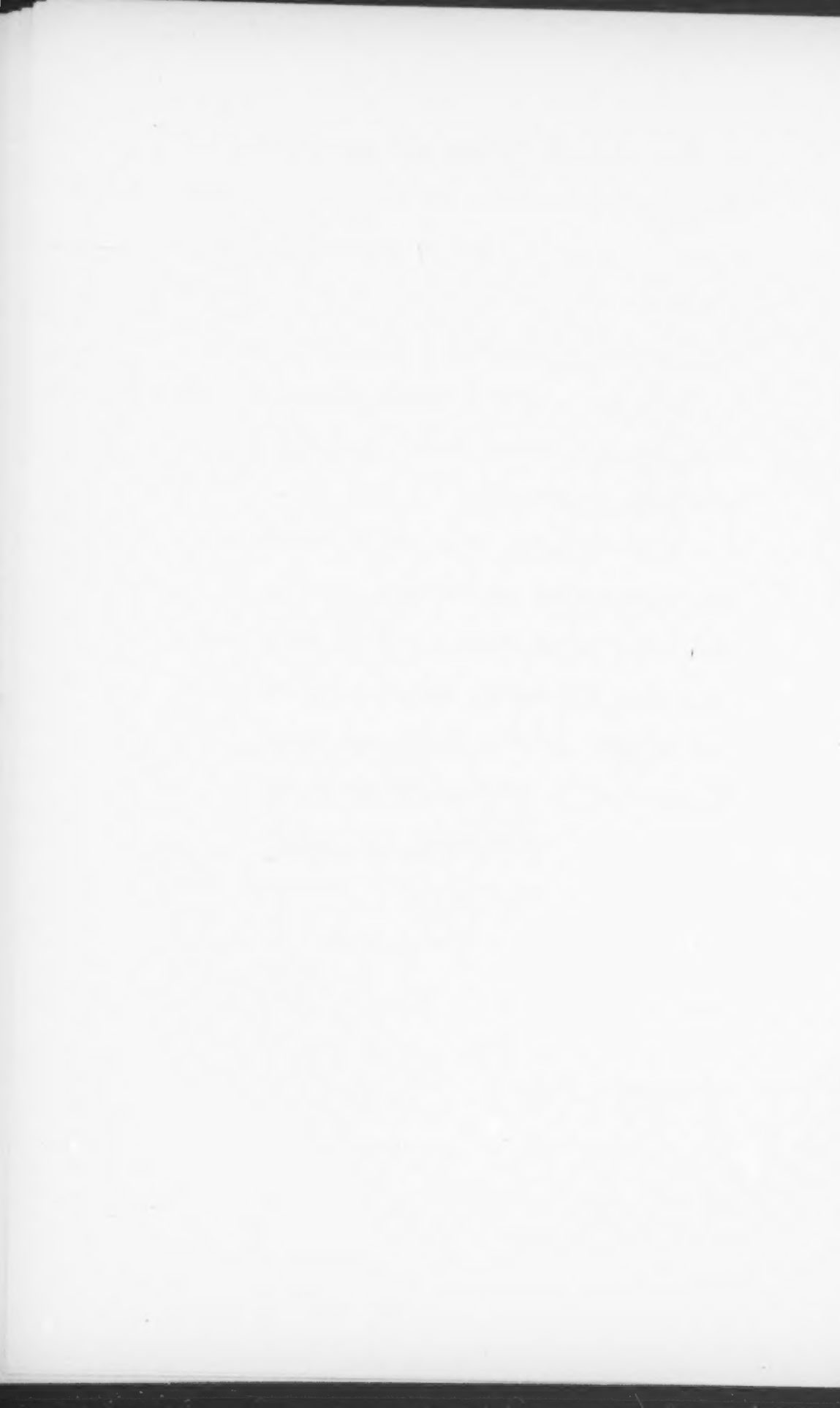
Accordingly, upon consideration of the appendices and briefs, it is ordered, under Rule 1:28 of this court, that the following entries be made on the docket of the Superior Court Department in the above matters:

Judgments affirmed.

By the Court (Brown, Smith
& Fine, JJ.),

Clerk

Entered: July 17, 1986



SUPREME JUCICIAL COURT for the
COMMONWEALTH

Office Of The Clerk, 1412 Court House,
Boston 02108, (617) 725-8055

No. FAR-4008

OCT - 3 1986

WILLIAM HEWETT

vs. FRANK J. CAMOSCIO

In the Application for Further Review
an Order has been entered that the
Application is DENIED

Jean M. Kennett, Clerk



RELEVANT STATUTORY PROVISIONS

Massachusetts General Laws Chapter 231

Section 132

Error not affecting substantial rights;
partial new trial

No new trial shall be granted in any civil action or proceeding on the ground of improper admission or rejection of evidence, or for any error as to any matter of pleading or procedure, if the judge who presided at the trial when application is made by motion for a new trial, or the appeals court or the supreme judicial court when application is made by appeal or otherwise, deems that the error complained of has not injuriously affected the substantial rights of the parties; and, if it appears to such court that said error affects part only of the matter in

APPENDIX "B"

controversy or some or one only of the parties, the court may direct final judgment as to part thereof, or some or one only of the parties, and may direct a new trial as to the other part only or as to the other parties. Amended by St.1973, c. 1114, section 206.

* * *

Massachusetts General Laws Chapter 268

Section 1

Perjury

Whoever, being lawfully required to depose the truth in a judicial proceeding or in a proceeding in a course of justice, wilfully swears or affirms falsely in a matter material to the issue or point in question, or whoever, being required by law to take an oath or affirmation, wilfully swears or affirms falsely in a matter relative to which such oath or affirmation is

required, shall be guilty of perjury. Whoever commits perjury on the trial of an indictment for a capital crime shall be punished by imprisonment in the state prison for life or for any term of years, and whoever commits perjury in any other case shall be punished by imprisonment in the state prison for not more than twenty years or by a fine of not more than one thousand dollars or by imprisonment in jail for not more than two and one half years, or by both such fine and imprisonment in jail.

* * *

Massachusetts General Laws Chapter 266

Section 76

Gross Fraud, etc. at Common Law.

Whoever is convicted of any gross fraud or cheat at common law shall be punished by imprisonment in the state prison for not more than ten years or

in jail for not more than two years or by a fine of not more than four hundred dollars. (1785, 21, section 4; 1815, 136, section 2; RS 126, section 33; GS 161, section 58; PS 203, section 66; RL 208, section 64.)

* * *

Massachusetts General Laws Chapter 211
Section 8 and Note 9.

Judgment or rescript after decision.

The full court shall, as soon as may be after the decision of the questions submitted to it, make and enter a proper order, direction, judgment or decree for the further disposition of the case, or cause a rescript, containing a brief statement of the grounds and reasons of the decision, to be filed therein; or it may by a writ of certiorari or other proper process remove the record of the case, or order it to be removed, into the

supreme judicial court, there enter judgment, and remand the record to the court from which it was removed to carry such judgment into effect, or instead thereof, the full court may order a new trial or further proceedings at the bar of the supreme judicial court, or order sentence to be awarded or execution issued in said court.

Note 9. Discretion

The power of the Superior Court to review, on bill of review on ground of newly discovered evidence, a final decree after rescript is limited but subject to limitations, granting such leave is a matter within the discretion of the Superior Court, subject to review by the Supreme Judicial Court and exercise of the discretionary power may involve examination of the petition and of bill sought to be filed and a consideration of the alleged

newly discovered evidence. Curley v. City of Boston (1942) 43 N.E.2d, 377, 312 Mass. 58.

* * *

Massachusetts General Laws Chapter 231
Section 125

Appellate Court's powers of amendment;
additional testimony

Upon appeal in a civil action the appeals court and supreme judicial court shall have all the powers of amendment of the court below; and whenever objections have been taken to the exclusion of evidence, or where the alleged error arises from the omission at the trial of some fact which, under the circumstances of the case, may subsequently be proved without involving any question for a jury, and without substantial injustice to either party the appellate courts shall have full discretionary authority

to cause such further testimony to be taken as it deems necessary, either by oral examination in court, by reference, by affidavit or by deposition, and both courts shall have power to render any judgment and to make any order that ought to have been made upon the whole case.

Amended by St.1973, c. 1114, section 204.

* * *

Massachusetts General Laws Chapter 231
Section 51

Amendments as to parties, process or pleading

In all civil proceedings which are not governed by the Massachusetts Rules of Civil Procedure or by the District-Municipal Courts Rules of Civil Procedure, the court may, at any time before final judgment except as otherwise provided, allow amendments



introducing a necessary party,
discontinuing as to a party or changing
the form of the action, and may allow
any other amendment in matter of form
or substance in any process, pleading
or processing, which may enable the
plaintiff to sustain the action for the
cause for which it was intended to be
brought, or enable the defendant to
make a legal defense.

Amended by St.1973, c. 1114, section
169; St.1975, c. 377, section 85.

* * *

Article XIV, Section 1. Constitution of
the United States

All persons born or naturalized in
the United States, and subject to the
jurisdiction thereof, are citizens of
the United States and of the state
wherein they reside. No state shall
make or enforce any law which shall
abridge the privileges or immunities



of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

* * *

United States Constitution, Article I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

* * *

Constitution of Massachusetts Article XII

No subject shall be held to answer for any crimes or offence, until the same is fully and plainly, substantially



and formally, described to him; or be compelled to accuse, or furnish evidence against himself. And every subject shall have a right to produce all proofs, that may be favorable to him; to meet the witnesses against him face to face, and to be fully heard in his defence by himself, or his counsel, at his election. And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land.

And the legislature shall not make any law, that shall subject any person to a capital or infamous punishment, excepting for the government of the army and navy, without trial by jury.

[See Amendments, Article XLVIII, The



Initiative, II, Section 2.]